

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

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4
5 UNITED STATES OF AMERICA,

6 -versus-

06-CR-154

7 LEWIS LEE,

8 Defendant.
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11 TRANSCRIPT OF SENTENCING PROCEEDINGS

12 held in and for the United States District Court, Northern
13 District of New York, at the Federal Building and
14 Courthouse, 15 Henry Street, Binghamton, New York, on
15 FRIDAY, October 27, 2006, before the HON. THOMAS J. McAVOY,
16 Senior United States District Court Judge, PRESIDING.
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1 APPEARANCES:

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3 FOR THE GOVERNMENT:

4 UNITED STATES ATTORNEY'S OFFICE

5 BY: MIROSLAV LOVRIC, AUSA

6 Binghamton, New York

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9 FOR THE DEFENDANT:

10 FEDERAL PUBLIC DEFENDER'S OFFICE

11 BY: LISA PEEBLES, AFPD

12 Syracuse, New York

1 THE CLERK: United States of America versus
2 Lewis Lee, 2006-CR-154. Please state appearances for the
3 record.

4 MR. LOVRIC: Miroslav Lovric for the
5 government. Good morning, your Honor.

6 THE COURT: Morning, Mr. Lovric.

7 MISS PEEBLES: Lisa Peebles appearing on
8 behalf of Mr. Lee. Mr. Lee is also present. Good morning,
9 your Honor.

10 THE COURT: Good morning. Please come forward
11 with the defendant. All right. The Court believes that you
12 had an opportunity to examine the presentence report and the
13 addendum filed by the probation officer.

14 Have you had a chance to speak with your
15 client, Mr. Lee, about the contents of that report?

16 MISS PEEBLES: I have, your Honor.

17 THE COURT: Mr. Lee, did you have an
18 opportunity to read over the presentence report and the
19 addendum to the report?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Did you talk the contents of the
22 report, the addendum, over with your attorney, Miss Peebles?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: All right. Now, Miss Peebles, the
25 Court knows that you've raised several issues and there's

1 been a response from the government. There's been a
2 sentencing memoranda filed in this case so I think what we
3 have to do at this point in time, before the Court decides
4 how much of the factual content of the presentence report to
5 accept, is to discuss some of those issues. Some of which
6 will perhaps drive part of the Court's sentence in this case.

7 I think the first one we might deal with is
8 the allegation that your client had sexual contact with the
9 victim's younger sister, Anna. You have filed documents
10 denying that and Mr. Lee denies that also. And I think that
11 arises in the context of maybe the victim's mother wondering
12 about whether or not that happened and I don't know if
13 there's anything more than that before the Court on that
14 particular issue.

15 Can you enlighten me on that?

16 MISS PEEBLES: Your Honor, the only thing that
17 I would note is when I read the presentence report, it seemed
18 to me to be commentary that the mother of the victim in this
19 case gave out of anguish or some other reasoning but I don't
20 think there's any basis, in fact, to even suggest that. I
21 don't think there's any evidence whatsoever to support that
22 type of allegation or even an insinuation, Judge. I think
23 it's really inflammatory and unfairly prejudicial to Mr. Lee,
24 particularly because this report will follow him to the
25 Bureau of Prisons and, in fact, while she has the right to

1 make certain comments, what her beliefs are and feelings, I
2 don't think that that type of comment, without any basis in
3 fact to support it, should remain in the presentence report,
4 your Honor.

5 THE COURT: Well, you know, the Court's are
6 not really in the business of editing presentence reports.
7 I'm in the business of receiving the information gathered by
8 the Probation Department, considering it and deciding whether
9 or not it should form the basis of any part of my sentence
10 here.

11 Let me ask Mr. Lovric, what's your take on
12 that allegation?

13 MR. LOVRIC: Judge, our view has always been
14 of the presentence reports that, first of all, they're a
15 confidential court document. So although I recognize that
16 this report will follow Mr. Lee throughout the system, it is
17 not a public document. It's actually very restricted in
18 terms of who can see it, who can have copies of it and the
19 people that will see this are usually going to be the type of
20 people that are involved in addressing either certain
21 counseling or certain other programs that Mr. Lee is involved
22 with. As far as the contents of the information, we think
23 it's appropriate for that type of information to be there for
24 one particular reason. In this case it's information being
25 provided by a victim or someone that's in the circle of a

1 victim in this case and that person's observations about
2 another family member who has been affected by Mr. Lee's
3 conduct. So the victim, the mother in this case, is relaying
4 information about her observations of another daughter and
5 what she's observed and what may have caused or may not that
6 type of behavior. That may be important to someone down the
7 road when Mr. Lee is in federal prison and either in some
8 type of programs or some type of treatment so that the
9 professional may have information to allow that professional
10 to make inquiry of Mr. Lee in terms of his problems, his --
11 whatever you want to call it -- addiction and so on. And
12 because it's such a limited scope that the document is
13 readily available, I just don't think that we,
14 nonprofessionals, with all due respect, should be editing
15 information that may be helpful to someone to try to help
16 Mr. Lee down the road.

17 THE COURT: I understand that the victim's
18 mother has made a request to speak in open court here today.
19 So I think I want to hear what she has to say considering
20 this particular issue, as well.

21 MR. LOVRIC: Okay.

22 THE COURT: Well, there's some other issues
23 that we have to address and one of them has to do with the
24 scoring of the Probation Department, and more particularly
25 the defendant has objected to assessing two additional points

1 to the base offense level, among other things, for an
2 assessment that there was a vulnerable victim in the
3 situation.

4 So, you want to address me, Miss Peebles, as
5 to that scoring factor.

6 MISS PEEBLES: Yes, your Honor. In my
7 sentencing memorandum, I detail the basis of our objection
8 citing Second Circuit case law, among other circuits, your
9 Honor, and in McCall, the Second Circuit decided that it is
10 essentially a two-prong test to determine whether or not that
11 type of enhancement would apply under the guidelines and in
12 particular there has to be a nexus between the crime and what
13 makes the victim vulnerable.

14 Secondly, it also has to show or the
15 enhancement has to be supported in that the defendant would
16 have to have targeted the particular pool of vulnerable
17 victim out of all other potential victims and I don't think
18 that's in any way supported by any of the facts in this case.
19 Specifically, probation put in the report that because the
20 victim in this case was home schooled and from a rural
21 Upstate community, meaning she grew up on a farm, that would
22 be the basis for an enhancement. I think that's semi
23 degrading to people who are living on farms and home
24 schooled. It doesn't mean they're uneducated or not familiar
25 with world events. Your Honor, I think that, in fact, it

1 actually supports not applying that type of enhancement. It
2 shows that she has family support, support strong enough to
3 where she could be home schooled on a regular basis. And
4 there are certain criteria that have to be followed for
5 anybody who decides to home school in order for the children
6 to be getting credit and be able to graduate with diplomas,
7 your Honor. So, I don't think that that in and of itself
8 would be a basis. All of the people in the community that
9 Mr. Lee was involved with were all from rural farms and
10 communities. He was the pastor of the church. He's getting
11 an enhancement for position of abuse of trust and an
12 enhancement because of the age of the victim. He's getting
13 those enhancements. To lob on another two level enhancement,
14 simply because she comes from a home schooled family and
15 lives on a farm in Upstate New York, your Honor, I submit
16 that anybody that Mr. Lee came in contact with at this
17 church, your Honor, were from a rural Upstate community. She
18 was not targeted out of a particular pool of potential
19 victims and I think that's what's required under the Second
20 Circuit case law in McCall, your Honor. So I don't think
21 there's a basis, in fact, for that enhancement. I would ask
22 the Court not to apply it.

23 THE COURT: Mr. Lovric.

24 MR. LOVRIC: Judge, we respectfully disagree.
25 In our sentencing memoranda we indicated that we think a

1 couple of things make this distinguishable. First of all, in
2 our view the Second Circuit and other circuits have never
3 said that this application is not applicable if age has been
4 taken into account by another sentencing factor. In our
5 view, this application actually has to be applied to a very
6 victim-specific scenario and in this particular case we
7 believe it applies for the following reasons: In addition to
8 Mr. Lee getting an enhancement for abuse of trust based upon
9 his position as a pastor and in addition to age being taken
10 into account under the sentencing guidelines, age and abuse
11 of trust do not address those vulnerable victim attributes
12 that we believe exist in this case. And particularly what we
13 have in this case is Mr. Lee had engaged in this conduct with
14 a minor and that minor had some very, very specific and
15 cumulative type of life's experiences or lack thereof. In
16 our view, Mr. Lee intentionally did this with this minor and
17 this was able to occur because of this minor's attributes.
18 Those include, and I agree, I do not mean to suggest that
19 everyone that grows up in Upstate New York is somehow
20 vulnerable to life's experiences but that's just one of the
21 factors. You have a minor who at the time that Mr. Lee began
22 to groom, and I use the word groom her, she was about 13
23 years old. You have a minor that's 13. You have a minor
24 that grew up on a dairy farm where life on a dairy farm is, I
25 think we all agree, significantly different than life in

1 Manhattan, New York. You have this minor that is in a very,
2 very rural, secluded area. Grew up on a dairy farm. Life on
3 a farm and life at home and being in a home school situation.
4 What does that mean? It means that this minor had less
5 life's experiences than a 13-to-15-year-old kid growing up in
6 the middle of Manhattan. I don't think it's a far stretch
7 for us to see that a kid growing up in New York City is going
8 to be perhaps a little bit more quick to recognize certain
9 things in life that happened to minors, including the type of
10 actions that Mr. Lee engaged in. This minor did not have
11 those attributes because, one, she grew up in the area she
12 did. She grew up in a rural farm, dairy farm situation,
13 mostly interacted with her siblings and other kids in her
14 community which live a fairly sheltered life. And the home
15 schooling and very, very basic fundamental living are
16 attributes that this minor had. I don't think it's a stretch
17 for us, now in hindsight, to see that this is exactly the
18 type of minor that was very, very susceptible and very
19 vulnerable to the conduct of a Mr. Lee. And to put it very
20 bluntly, Judge, it's our view, at least that's why Mr. Lee
21 chose this minor, is to engage in the acts he did because he
22 could exert all of his life's experiences at the age of 55
23 upon this minor who had a lot less life's experiences than
24 perhaps another 13 or 15 year old in a large metropolitan
25 area. That's our only point. That's why we think it applies

1 because it doesn't just say look at age and it just doesn't
2 say look at the abuse of trust position. It says look at the
3 minor and none of the other factors and enhancements in the
4 guidelines focus on the minor, the victim, and this
5 enhancement does. So that it says look at this person and
6 what qualities or life's experiences or lack of do -- lack
7 thereof and how did that contribute to the defendant being
8 able to accomplish what he did.

9 THE COURT: All right. Well, the Court has
10 given this a lot of thought and I think one way to look at
11 it, aside from the way that the Second Circuit and other
12 circuits have looked at it, in this particular case, is to
13 examine the totality of the circumstances surrounding the
14 victim. And here the victim's age, of course, is one set of
15 circumstances and that -- at the age of 13 on through the age
16 of 15 there was a lot of contact between the defendant and
17 the victim. And the fact that the victim did not attend
18 public school, was home schooled, certainly is nothing
19 against that form of education. Sometimes it can be superior
20 to send someone to public school but all of us who went to
21 public schools or parochial schools or came up through
22 schooling where you're in contact with other children, peers,
23 realize that you -- the experience you have, interact with
24 peers and adults who are supervising, controlling the
25 education, those peers can be rough experiences and can be

1 difficult. They can teach you that everyone out there in the
2 world is not friendly and looking out for your best interest
3 and you have constant interaction, action and reaction, with
4 those with whom you associate with in the public sector and I
5 think that somebody who doesn't have that and, once again,
6 I'm not saying anything against home schooling. I'm just
7 saying that that changes that person based on the lack of
8 that type of experience that the Court has just iterated.

9 On top of that, without going into any great
10 detail, there's information in the presentence report that
11 this victim had very adverse circumstances of a sexual nature
12 on two occasions prior to Mr. Lee having met her and the
13 Court also believes that that kind of experience, without
14 going again into any detail, would in the Court's judgment
15 make this particular young lady more vulnerable than someone
16 who hadn't had those type of experiences. Now, I'm not a
17 doctor. I'm not a psychologist. I'm not a psychiatrist.
18 I'm not speaking as an expert in any of those fields. I'm
19 speaking as a judge whose had some 20 years of experience on
20 the bench and 23 and a half years experience of practicing
21 law before I got on the bench. I just think that type of
22 experience based on the knowledge I gained over the years
23 would and could make someone more vulnerable, more
24 particularly vulnerable than someone who didn't have those
25 types of problems prior to meeting Mr. Lee.

1 So, the Court feels based upon the totality of
2 the circumstances that that enhancement should apply and I'm
3 going to apply it in the sentencing. Once again, revisiting
4 the allegation with Anna, the younger daughter, I'm going to
5 withhold on that until I've heard what the victim's mother
6 has to say in that scoring. Also, there's been questions
7 raised regarding the fact the Court is mandated under certain
8 circumstances to order restitution. And questions were
9 raised about restitution in this case and, of course, there's
10 a little bit of case law out there on that, but not an awful
11 lot. I'd like to know the defendant's position with regard
12 to that before I make any kind of order of restitution.

13 MISS PEEBLES: Your Honor, it was brought to
14 my attention this morning that Mr. Lovric has a submission
15 from a victim's advocate group, that the victim in this case
16 is intending on perhaps looking in to getting into some kind
17 of inpatient program for a year. Your Honor, that -- it may
18 or may not happen. I think it might be an issue with regard
19 to that. As the Court stated if, in fact, the victim in this
20 case had previously been sexually abused and that would come
21 into play as to how much more responsibility Mr. Lee should
22 have to pay in restitution, if there were underlying
23 psychological issues and if she is going to attend some kind
24 of year long inpatient program it would, from what I was
25 told, cost over \$52,000 --

1 THE COURT: I'm sorry. 50?

2 MISS PEEBLES: \$52,000.

3 THE COURT: Thank you.

4 MISS PEEBLES: And I think in that sense, your
5 Honor, we would take issue with some of that. We'd need a
6 lot more information. We'd have to verify that, in fact, she
7 was attending the program. We may have to get an expert
8 involved to determine what responsibility Mr. Lee would have
9 and what he's contributed to her psychological problems as
10 well, your Honor. So, I'm not in a position at this point to
11 contest an order that is just mere speculation at this point
12 in terms of what costs might accumulate down the road
13 concerning her treatment. I note Mr. Lee is more than
14 willing to pay restitution in this case. He's indicated
15 that. He will pay what is owed according to the Court. What
16 the Court deems appropriate. He wanted to see some receipts
17 for some of the miscellaneous expenses that they set forth in
18 the report. I think this was over \$900 that wasn't really
19 specified in term of how that money was accumulated. If the
20 Court deems it appropriate, Mr. Lee obviously accepts
21 responsibility for the expense and we'd gladly make
22 restitution, your Honor, if that's his position.

23 THE COURT: So with the 13,000 plus figure
24 that's in the report, the Court thinks there has been
25 submissions made that support that level of restitution. And

1 you've gotten copies of documents from the Probation
2 Department which speak to that and I think that's one of the
3 things you're referring to, although there was a gray area of
4 approximately nine hundred dollars. The Court's going to
5 find, at least as to those things; that is, payment for
6 treatment of family members of the victim and the victim's
7 treatment and mental health care so far to this point is
8 certainly an appropriate item of restitution, as well as the
9 other damages submitted because the attention of the family
10 was reverted entirely because of their missing daughter from
11 taking care of the farm operation. There was a drop in milk
12 production. There was a loss of other types of that nature
13 that was directly responsible for monetary damage. The Court
14 finds that those things were proximately caused, as well as
15 the money expended, going out and putting up flyers and the
16 fact that their time was taken away from conducting the
17 farming operation. All of the expenses that flow directly
18 from that. The Court doesn't see any intervening cause that
19 would break the chain of causality between the fact that the
20 daughter was removed and that they were desperately trying to
21 find her and those things that occurred as a result of that.

22 So, Mr. Lovric, how can this Court order
23 restitution for expenses that may occur in the future insofar
24 as treatment for the victim is concerned but the Court
25 doesn't have any thing before it, at least to this point, as

1 to whether or not she's going to need that kind of treatment,
2 how much it's going to cost and how much of that treatment,
3 if any, is related directly to this victim's -- this
4 defendant's actions and the Court would think as a basic
5 matter that if it's already found that the victim was more
6 vulnerable because of the prior sexual encounters, if she
7 goes through this experience with Mr. Lee, that even though
8 part of that might be attributable to what happened to her
9 when she was younger, when Mr. Lee found her she already had
10 those frailties. Kind of like the egg shell plaintiff theory
11 in New York State law that they take the victim as they find
12 them. So, he'd be responsible for the entire costs of any
13 medical care or treatment, psychological/psychiatric therapy.
14 I would think that's the case but I would probably have to
15 have something before me upon which I can say, well, this is
16 the plan and here's somebody that says this is what it's
17 going to cost and why it's going to cost that much.

18 Do you have such information for the Court?

19 MR. LOVRIC: Well, I think the Court can
20 structure the sentence of the -- first of all, we have two
21 sides or two separate areas as far as restitution. The
22 restitution figure in the probation report, the 13,900 some
23 dollars, that specifically relates to quantified harm that
24 has been caused and has been calculated directly as a result
25 of the defendant's actions. The second part that we're now

1 talking about, Judge, has to do also with harm that Mr. Lee
2 caused because Mr. Lee is responsible for the minor having a
3 tremendous amount of issues, both behavioral and perhaps
4 psychological and otherwise, and these specifically relate to
5 harm that's been caused, but harm that has not been either
6 addressed or in some way remedied. And that's the only, I
7 think, issue that kind of hovers over this area.

8 Now, the victim's family has gone to a
9 facility and found a facility that they believe from
10 everything they know would be an appropriate type of program
11 and this facility has done a calculation of how long and what
12 the care would cost, and this cost is directly related to the
13 harm that's already been caused. So, we're not talking about
14 some harm that is going to appear or harm that's going to
15 take place in the future. The harm has been caused. The
16 defendant has caused the victim harm and the victim is now
17 looking for professional help to remedy that harm and the
18 Court can, in my view, order restitution that this facility
19 indicates would be the cost for a year treatment.

20 THE COURT: I don't know what facility you're
21 talking about. I have no information whatsoever on this
22 topic, except what I've heard here in Court this morning but
23 if you have some information, I'd be glad to look at it.

24 MR. LOVRIC: Judge, I can -- I've shown the
25 defense counsel what I have which is a, I believe, an

1 estimate from the facility. It's on what appears to be
2 letterhead. It has calculations. I thought or I believe
3 that probation had a copy of this.

4 THE COURT: I don't think I've seen it but
5 maybe I have. I don't believe so. In fact, I know I haven't
6 seen it. If you want to hand it up I'll take a look at it.

7 MR. LOVRIC: Sure, Judge.

8 THE COURT: Thank you.

9 MR. LOVRIC: If I can talk while the Court
10 looks at it.

11 THE COURT: No, you keep talking.

12 MR. LOVRIC: My point, Judge, is that in my
13 view the Court can order restitution up to the amount that
14 this facility indicates would be required in order for the
15 victim to get adequate counseling. The Court can also, in
16 order to make sure, as I think counsel asked me earlier, in
17 order to make sure that the money is spent on this program,
18 and if it's less than this program -- less than what their
19 estimate is, then by all means the defendant shouldn't have
20 to pay money that is not specifically going to the program.
21 So, for example, if after eight months the victim has
22 successfully completed the program and has done very well and
23 it's not required for the additional four months, by all
24 means he's not going to be paying those additional amounts
25 that are not being inputted into the program. But I think if

1 the Court orders restitution up to that amount, with the
2 proviso that that is conditioned upon the victim being
3 provided care in the manner that is being addressed and that
4 the money actually is being expended in that program, and
5 that the victim is going to that program in order to address
6 those concerns, and then obviously if all of the money is not
7 required, the defendant would not be obligated to pay. If it
8 is required, then I think he should pay.

9 THE COURT: Okay. Well that makes sense to
10 the Court.

11 MISS PEEBLES: Your Honor, can I be heard on
12 that?

13 THE COURT: Sure.

14 MISS PEEBLES: It seems to me that at the
15 midnight hour in getting this type of submission to the Court
16 and they're asking for a lot of restitution, if she
17 participates in this program, again I state that I don't know
18 what Mr. Lee's responsibility would be if you look into some
19 of her psychological issues apparently that existed before
20 Mr. Lee entered her life. I think that those would or should
21 have an impact on the type of treatment that she might need,
22 which is probably more significant but again, your Honor, the
23 question becomes when does it stop if she needs treatment for
24 the rest of her life and I don't think that it would be
25 appropriate for Mr. Lee to have that looming over his head

1 with no end in sight. This could have been done. This case
2 has been pending for quite a long time now. The sentencing
3 date was adjourned. It's been on the Court's calendar. I
4 don't think that coming into Court in the morning before I've
5 even had an opportunity to discuss with another expert to
6 look into the matter where I'm prepared to make an argument
7 concerning this amount because it has a significant amount of
8 money that Mr. Lee's not going to be able to afford to pay
9 given the gravity of sentence of incarceration that he's
10 serving.

11 So, in light of all those factors, Judge, I
12 don't think it's appropriate to leave an open ended
13 restitution requirement that Mr. Lee may or may not have to
14 pay down the road depending on what treatment the victim
15 decides to try to receive as a result of this.

16 THE COURT: Well, nobody's told this Court
17 that the victim needed any treatment whatsoever from anyone
18 before Mr. Lee did what he did to her. That's one thing.
19 The second thing is that if it turns out that she needs
20 therapy for a longer period of time than this one year
21 document talks about, then the Court certainly, if it
22 believed there was cause and relation, would order that no
23 matter how much it's going to cost Mr. Lee in the future.
24 Yeah, it's got to hang over his head. He caused it to be
25 there. But are you asking me for an adjournment so that you

1 can bring before the Court information that may cause the
2 Court to do something else in order that this 13,900 plus
3 dollars and \$52,000 --

4 MISS PEEBLES: I don't know how the Court's
5 planning on structuring the restitution order and that
6 somewhat concerns me given me the amount of money they're
7 requesting at this point. If I had an idea of how the
8 Court -- again, Mr. Lee accepts responsibility for having to
9 reimburse the victim for any type of treatment that she may
10 need. It just, your Honor, I do think that we need more
11 information and I would like some clarity on how it would --
12 how the order would be, your Honor.

13 THE COURT: Well, first of all, the Second
14 Circuit has instructed the Court and District Courts, many
15 times, that unless somebody who's paying restitution is
16 clearly -- has clearly enough amount of money to pay
17 immediately, like the government has requested in his
18 memorandum, the Court has to structure the restitution over a
19 period of time. Structuring part of the payments to be made
20 while the defendant is incarcerated, as you say, it's going
21 to be for a substantial amount of time. He's going to have
22 to pay from -- pay during that period of time a certain
23 amount and if after he's released he's going to have to pay
24 additional amounts and the Court plans on structuring it that
25 way. Is that the kind of structure you're talking about or

1 you asking how the Court is going to direct the additional
2 52,000 or any other monies that might be necessary for
3 treatment would be structured? That will be rolled into the
4 full restitution amount.

5 MISS PEEBLES: Meaning the Court's not going
6 to order a restitution amount in the amount of \$52,000. The
7 Court is merely going to order restitution or reimbursement
8 for treatment that the victim completes or attends that
9 Mr. Lee would be responsible for. And then would counsel,
10 depending on the expense, would counsel have an opportunity
11 to show a causal nexus to the Court with regard to the amount
12 that may or may not be owed, I guess would be my question?
13 That would be the only concern I would have, Judge.

14 THE COURT: I don't think the sentencing Court
15 can be like a worker's compensation court and when somebody
16 comes in, evidence comes in that she goes down to this
17 program, she's there for two months, now you say I have
18 information that she doesn't need this anymore and you've got
19 a medical expert to come in and she's done there receiving
20 this treatment. We have to reconvene time and after time to
21 see if she's still in need of treatment. I think some courts
22 can do that in some situations. I don't think that's
23 appropriate. More appropriate to me would be if I give
24 you -- if I bifurcate the issue of restitution. I'm not sure
25 I can do that. I'll do it anyways and see what happens.

1 You'll be given an opportunity to come forward with evidence
2 that says that she's not going to need this treatment in the
3 future. Right now the only evidence I have before me is a
4 plan from an institution that treats a lot of people but it
5 doesn't say anything about her need for that particular
6 treatment. And the Court would be glad to hear testimony
7 from both sides as to whether or not it's needed and if it is
8 the Court is sure going to order it. But I think that way,
9 at least we can address it all at one time. I don't think we
10 can address it incrementally and say, well, he's only going
11 to be liable for what has past. It's going to be what
12 somebody tells me is needed. Now here's what it's going to
13 cost, I'll order that. What Mr. Lovric says is a way of
14 handling it is if she, during the course of that treatment
15 doesn't need it anymore, sure, Mr. Lee shouldn't be
16 responsible for anymore money than the cost incurred and the
17 Court agrees with that.

18 So, Mr. Lovric, what's your position on that?

19 MR. LOVRIC: Yeah, Judge. I mean, to put it
20 simply I'm not very sympathetic to the defense argument that
21 Mr. Lee should somehow have the opportunity to monitor the
22 victim's --

23 THE COURT: I said I'm not going to do that.

24 MR. LOVRIC: Okay. Plainly put, Judge, I
25 think this Court has not only the power but also a very

1 strong obligation to order restitution that Mr. Lee pay for
2 counseling and the type of program needed for this victim to
3 enter.

4 THE COURT: Do you think the Court should not
5 hear evidence about whether or not there's a need for this
6 victim to be sent to a facility like this, that the defense
7 shouldn't be given an opportunity to bring that before the
8 Court?

9 MR. LOVRIC: I do object to that, Judge.

10 THE COURT: Why?

11 MR. LOVRIC: Because the bottom line is, I
12 believe there's more than enough evidence and information
13 before this Court to the that the victim has suffered
14 psychological and behavioral harm. For us -- and with all
15 due respect to courts, to now delve into and have
16 psychiatrists and psychologists come forward and debate how
17 much time and how much money should be spent, I find it
18 repugnant, to be quite honest, Judge, which is you have a
19 15-year-old kid who has been sexually abused by this
20 defendant and for anybody to say that this 15-year-old kid
21 doesn't require some very substantial rehabilitative
22 measures, I think we all have to be born on another planet.
23 So for us to haggle over dollars and cents, Judge, I
24 personally find it very repugnant, which is I think the Court
25 should hold this defendant accountable for the harm that he's

1 caused and I do disagree completely with the defense's notion
2 that somehow partial harm was caused by other people before
3 he encountered this victim. To put it bluntly, Judge, this
4 defendant chose his victim and he victimized her and he then,
5 on top of whatever harm had been done to her, catapulted that
6 exponentially. Now he'd like to redistribute, reapportion it
7 as if it was like some bank fraud case.

8 THE COURT: The Court has already addressed
9 that and said the Court doesn't believe that's the way it's
10 going to be, but I'm asking you if you're standing here and
11 representing to this Court that a defendant should not be
12 able to present evidence before the Court that any type of
13 treatment is needed, the information about the institution,
14 which may very well be what's appropriate in this case. I'm
15 not taking a position on that one way or another right this
16 minute. Just came to the defendant I guess today or
17 yesterday. I mean, shouldn't the defendant have a chance to
18 address the Court about it?

19 MR. LOVRIC: No.

20 THE COURT: No?

21 MR. LOVRIC: Here's what's going to happen,
22 Judge. This family is going to send their daughter to a
23 rehabilitation center regardless of whether this defendant
24 pays for it or not. This family is going to do what it takes
25 to get their daughter in the best --

1 THE COURT: I haven't heard from anybody that
2 the family is going to send her there.

3 MR. LOVRIC: The family has represented to the
4 government, to the Probation Department and I believe she'll
5 tell you this when she speaks, the mother, that their
6 intention is to send their child to get treatment. For this
7 defendant to somehow inject himself and say, well, prove to
8 me that she needs treatment goes counter to the entire rules
9 and laws of restitution. The courts have said and the
10 statutes and Congress has said you, defendant, when you cause
11 harm you will be liable for it regardless of whether you
12 think the victim ought to get full compensation or could do
13 better or can do without it. That's not the standard. This
14 family --

15 THE COURT: Nobody said it was, Mr. Lovric.

16 MR. LOVRIC: This family --

17 THE COURT: You're putting up a strongman and
18 knocking him down. The Court's not disagreeing with any of
19 that. The Court only pauses because this information just
20 came -- I just heard about it this morning --

21 MR. LOVRIC: I did too.

22 THE COURT: -- for the first time. The Court
23 only pauses because the defendant hasn't had an opportunity
24 to address that with whatever evidence it might come up with.

25 MR. LOVRIC: I'm simply suggesting that the

1 Court has a very easy mechanism, which is this defendant will
2 not be punished for anything that he doesn't -- this
3 defendant will not be caused to pay for anything that doesn't
4 go to direct rehabilitation for the victim. The way the
5 Court can structure it in my view is to say the defendant is
6 hereby ordered to pay restitution, restitution of the second
7 portion dealing with the rehabilitation of the victim up to
8 the amount of \$52,800. The defendant is not required to pay
9 any money that is not expended or incurred by the victim as
10 to rehabilitation. So, if the victim does not choose to go
11 to rehabilitation or any program or after five months, three
12 months, finds that things have been worked out sufficiently,
13 the defendant won't be liable for it.

14 THE COURT: Okay. Well, the Court will
15 consider all that when I get to the sentencing. Thanks for
16 hearing from both sides on that issue.

17 Let's see. Was there any other factual
18 related matter that the Court had to address before I hear
19 what you have to say on behalf of your client?

20 MISS PEEBLES: No, your Honor, I think that
21 covered it.

22 THE COURT: Why don't you tell me what you
23 want to say on behalf of your client. The Court's going to
24 adopt the factual content of the presentence report by a
25 preponderance of the evidence, with the exception of the

1 question of the touching of the younger daughter. We'll hear
2 about that later, so go ahead.

3 MISS PEEBLES: Your Honor, I think in my
4 sentencing memorandum that was filed with the Court, I set
5 forth Mr. Lee's feelings and position --

6 THE COURT: You did.

7 MISS PEEBLES: -- with regard to his conduct.
8 I think it fully elaborates on how he feels what he did. He
9 knows he left a path of destruction behind. He doesn't
10 mitigate it. He took responsibility. He came into this
11 Court. He recognizes he hurt not only the victim's family
12 but his own family as well among other people. He accepts
13 that, your Honor, and he is not attempting at all to mitigate
14 or minimize anything that he's done. He simply wants to do
15 what he can so it wouldn't ever happen again. Get treatment
16 if that's, in fact, is what's going to be required for him as
17 well. He wants to make sure that restitution is paid to the
18 family in this case. He knows what he did was wrong. All of
19 those things, your Honor, and I think that Mr. Lee accepts
20 whatever punishment the Court deems is appropriate under the
21 circumstances of this case. I do note that he has support
22 from his family. His brother Dewey submitted a letter to the
23 Court.

24 THE COURT: I read the letter.

25 MISS PEEBLES: He has remained supportive of

1 his brother, Mr. Lee. He comes from somewhat of a distorted
2 background himself. They had a lot of abuse as young
3 children. I know the Court knows that. All of those things,
4 your Honor, doesn't make it an excuse for Mr. Lee and what
5 had happened. Up until this point, your Honor, he's always
6 lead a law-abiding life. He's a very, very hard worker. He
7 was collecting retirement from a manufacturing position he
8 had with GM. He's always supported his family. He deeply
9 regrets what he's done. He's at a time -- stage in his life
10 where I think it's baffling to him that he's put himself in
11 this position. If there was some kind of explanation, I know
12 he'd want the Court to know it but he has no good explanation
13 for it at this point, Judge. Again, he has no excuse so with
14 that in mind I'm asking the Court to impose a sentence of no
15 worse than 108 months given the fact that your Honor applied
16 the two level vulnerable victim enhancement. That is a
17 guideline sentence. It's a low end of the guidelines at 108
18 months but it also includes a number of various enhancements
19 that Mr. Lee did not object to and again, your Honor, accepts
20 responsibility for knowing that he was a pastor in his
21 position and that people relied on him in that capacity.

22 With that in mind, your Honor, I think in the
23 Court's consideration, background, characteristics of
24 Mr. Lee, and all the enhancements in this case, that a
25 sentence of 108 months is certainly appropriate and would be

1 a just sentence in this matter, your Honor.

2 Thank you.

3 THE COURT: All right. I think the Court so
4 far has followed the Booker formula with respect to how we
5 arrived at where the sentencing range is going to be. The
6 Court, of course, has considered the guidelines and
7 considered all the factors and all the statements in the
8 guidelines and we've addressed the area of contention with
9 respect to vulnerable victim.

10 Now, if the Court is thinking about it,
11 entertaining a guideline sentence and it is, there are
12 certain things that might drive the Court one way or another
13 within the framework of those guidelines. So I need you to
14 address, if you wish to address, some of the things that the
15 Court has knowledge of that might drive the Court to a higher
16 position within the guideline range and one of the things is
17 the fact that the victim has informed probation that the
18 defendant on two prior occasions had improper contact with
19 minors.

20 Do you want to address that or you don't?

21 MISS PEEBLES: Your Honor, I can tell the
22 Court that Mr. Lee has adamantly denied any kind of contact
23 with any other minor other than the victim in this case, and
24 he stood by that from the beginning. He had two
25 extramarital affairs with women that were over the age of 18

1 and it was earlier on in his marriage which he disclosed to
2 the probation officer, Bruce Van Tassel. And he acknowledged
3 that and admits that, your Honor. He has never had any kind
4 of contact and I don't believe there's anything factually to
5 support that, Judge. I do note that Mr. Lee, when he was
6 with the victim in this case, told her that he had an
7 extramarital affair on two separate occasions and they were
8 with older women and he was in his 20s at the time it
9 happened, your Honor. And again, aside from that, he's
10 always been faithful in his marriage other than those two
11 times before, your Honor, and they were not with minors and
12 he said that from the beginning, your Honor.

13 THE COURT: Well, there's information before
14 the Court to the contrary because there's an admission made
15 by the defendant to the victim and that's been transmitted to
16 the Court. The other aspect of it, and I don't want to get
17 into any details of it, is there is an allegation a family
18 member is involved in that type of conduct also. So the
19 Court is aware of that and the information comes to the Court
20 as it comes to it and the Court understands that it's got to
21 decide if that information should play a part in the
22 sentence.

23 Mr. Lovric?

24 MR. LOVRIC: Do you want me to address that
25 particular issue or my sentencing?

1 THE COURT: You can address anything you'd
2 like because I know you will anyway.

3 MR. LOVRIC: I'll try to be very brief, Judge.
4 I just wanted to remind the Court that Miss Thomsen wanted to
5 briefly address the Court before the sentence.

6 THE COURT: I'm waiting for that I want to
7 make sure we get the attorney's versions out first. I also
8 have to hear from Mr. Lee. I'm going to listen to Miss
9 Thomsen of course.

10 MR. LOVRIC: As far as the issue the Court
11 raised, I think from our standpoint the Court should and is
12 allowed to consider all factors and facts that have been
13 presented to it in the presentence report, in addition to
14 these statements and allegations of prior conduct. I know in
15 paragraph 64 there's information about a prior abuse of
16 another person in Mr. Lee's past life further back. Those
17 are all factors, yes. I think the Court should and can, as
18 well as all the other factors, address that in fashioning the
19 sentence.

20 My input to the Court in terms of a sentence
21 is I think stating the obvious to the Court, and we've stated
22 this before, which is I don't believe that any of us really
23 can intellectually comprehend the type of harm that Mr. Lee
24 has caused to not only this minor but to their family. I
25 know that Miss Thomsen is going to speak and talk about some

1 of the effects and harm, but I'm not sure that the defendant
2 even really fully grasps the severity of the harm that he's
3 caused. I think he understands the actions but the victim in
4 this case, in most people's view, is probably going to be
5 dramatically affected for many, many years and perhaps for
6 her entire life. The family equally so. The other siblings,
7 the parents, grandparents. Its a domino effect that just I
8 think goes beyond belief unless you're in that family or
9 unless you're one of the people that is close to that family.
10 So, the amount of harm -- and we had a debate over
11 restitution but the amount of harm that's been caused here
12 will never -- Mr. Lee will never be able to put that to the
13 way it was or to rectify it or address it.

14 And so far as the sentence goes, Judge, I
15 think this Court ought to keep focused, as I know this Court
16 does, but it ought to keep focused on the victims, not on
17 Mr. Lee. To be quite honest, Judge, Mr. Lee deserves
18 everything that the law has to give him and then plus some.
19 The law is the law but the Court I think should focus on the
20 real place where focus needs to be addressed and that is the
21 victims, the victim's family, the people that are really the
22 casualties of Mr. Lee's conduct and in doing so, punish
23 Mr. Lee for what he has done to those victims.

24 THE COURT: All right. Miss Thomsen, did you
25 want to come forward to address the Court? There's no formal

1 procedure here. You can just tell me whatever it is you wish
2 to say. We'll all listen to you.

3 MRS. THOMSEN: I'm probably going to read just
4 because it's easier for me.

5 THE COURT: Sure. That's fine.

6 MRS. THOMSEN: Good morning, your Honor.
7 First, I'd like to start by saying thank you to this Court
8 for allowing me to speak. I also know that you have read our
9 family's victim impact statements and although I do not wish
10 to repeat most of it, I do feel that it's important to give
11 you some family history so that you can see more of the
12 effects that this crime has had on our family.

13 In 1990 Mike and I decided to start farming
14 for ourselves. Our goal was to realize Mike's life-long
15 dream of owning the Thomsen's third generation family farm.
16 Over the next eight years we had some serious struggles in
17 our marriage, in our finances and the farm. But then we
18 became determined to make it all work and with God's help it
19 did. In the past eight years Mike has become the best
20 husband and dad that you could ever ask for. Our farm began
21 to thrive. Our herd production went from 25 pounds of cow a
22 day to 65 pounds of cow a day. Although it did not work out
23 that we were able to buy the Thomsen's farm, we did buy my
24 parents' farm. Our family was happy. So many people
25 commented to me about my children, how good and how happy

1 they were. They would say things like Candy's so sweet or
2 David is just a courteous young man, and Elizabeth is such a
3 happy-go-lucky girl. She always has a beautiful smile on her
4 face. People also told me what a joy it was to watch my
5 children. They even commented on the bond of love that our
6 family has for one another. Edwin, our seven-year old,
7 talked with a counselor recently and she told me what a
8 well-rounded, intelligent, skilled and very pleasant young
9 man that he was and she also told me that this only came from
10 good parenting skills.

11 Lewis Lee came into our lives about four years
12 ago. Before he had come, Mike and I saw a need for the
13 pastor in our church to have a good Christian friend and
14 confidant, and because Mike was available during the day and
15 Lewis liked to hunt and fish, we allowed him into our lives.
16 I have learned since then that both of our families saw from
17 the very beginning that Lewis was only interested in
18 Elizabeth. I still can't comprehend how a man can call
19 himself our pastor and friend and set out to betray and hurt
20 us and our family the way that Lewis did. Lee did not come
21 into a bad situation and make it worse. He came into a very
22 good situation and made it horrible.

23 I have felt like I'm living a very long and
24 terrible nightmare. The only problem is I never wake up and
25 it never goes away. I recently had a miscarriage that was

1 caused mostly from stress. Our farm, as you know, is
2 suffering and Elizabeth, my happy-go-lucky girl, has been
3 very confused, hurt, angry, and not very happy at all. Our
4 happy family is not so happy anymore.

5 I did not want Lewis to gloat at all the pain
6 and destruction that he has caused though. For you see,
7 after losing my baby I seriously contemplated suicide and did
8 not want to go on any longer. The pain of life seemed too
9 great but during the time in the past month, I've realized
10 that I am a fighter and by the grace of God all mighty and
11 the determination, our marriage, farm and our family will
12 survive this. I will not let this man destroy mine or
13 Elizabeth's lives. We will be stronger people some day for
14 what we have gone through and we can help someone else maybe
15 get through a similar situation.

16 I know that Lewis will have to answer to God
17 some day and I also know that there are consequences here on
18 earth for your actions. No mother should ever have to worry
19 about a child disappearing in the middle of the night, not
20 knowing if she's alive or dead or what this man had done with
21 her. No father should ever have to feel the pain of losing
22 his little girl to his best friend and pastor. Then have the
23 pain of knowing in his heart that he is the protector of the
24 family and feeling that he should have been able to do
25 something to stop it. He did try to stop it but after those

1 attempts Lewis took her away in the middle of the night.
2 Lewis may think that he is winning some sick game of his but
3 I'm asking you to put him in checkmate for good. I'm asking
4 this Court to give him the maximum sentence that is allowed
5 for these crimes.

6 THE COURT: Let me ask you this, ma'am, have
7 you made plans to send your daughter away for the therapy
8 you've heard discussed today?

9 MRS. THOMSEN: Your Honor, I apologize for not
10 getting this in sooner. I didn't even realize that we could
11 claim that for restitution. Because of Elizabeth's state
12 and, yes, she did have prior problems before Lewis, but as
13 our pastor Lewis was also counseling her for them when he did
14 what he did to her. And it's hard for me -- I don't want to
15 send her away. It was very hard for her to be away from her
16 before, but I know that we have to do what's best for her.
17 And right now I feel that she needs something more intensive
18 than just once a week counseling.

19 THE COURT: Thank you very much. Thanks for
20 coming forward. I know it was very difficult for you to do
21 that.

22 MRS. THOMSEN: And you had questions about my
23 daughter Anna as well?

24 THE COURT: If you want to address that, sure.

25 MRS. THOMSEN: The reason that I made that

1 comment was because I noticed that Anna had been touching her
2 private areas a lot. And I asked the counselors about it and
3 we decided that really, you know, we didn't really want to
4 force anything -- that's worse on a child to try to force it
5 out of them so -- but I did want to make the Court aware of
6 that.

7 THE COURT: All right. I appreciate that.
8 Thank you very much. Okay.

9 Mr. Lee, would you like to address the Court
10 before I sentence you, sir?

11 THE DEFENDANT: Respectfully, no, your Honor.

12 THE COURT: All right. Anything else from
13 either side?

14 MISS PEEBLES: No, your Honor.

15 MR. LOVRIC: No, Judge.

16 THE COURT: Do you know of any legal reason
17 why I shouldn't impose sentence upon Mr. Lee?

18 MISS PEEBLES: No, your Honor.

19 THE COURT: Mr. Lee, do you know of any legal
20 reason I shouldn't impose sentence upon you?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: The Court as it's already stated
23 has considered carefully the guidelines in this case and all
24 of the written material and oral material that's been
25 presented to the Court that surrounds this particular

1 instance that bear on the guidelines. The Court has also
2 considered the statutory sentencing purposes set forth in
3 18 US Code Section 3553(a) and has considered the severity
4 and enormity of your criminal behavior. I've considered your
5 attributes and characteristics, what's gone on in the past,
6 both good and bad and the Court -- as the Court must. I've
7 considered the need to punish you for what you did here and
8 it's clear to the Court that you've gone a long way to
9 destroy the lives, not only of your victim, but of your
10 victim's parents and her siblings and the Court feels that
11 it's just beyond my power to describe how heinous this crime
12 is.

13 The Court has also considered that the public
14 has to be protected from any future conduct and that's why
15 the Court was making inquiry as to what happened in other
16 instances before because the Court believes that that means
17 that you're more dangerous. You've got a problem that just
18 surfaced because of the conduct here and that's going to be a
19 major factor in the Court deciding where you should be placed
20 within the guideline range.

21 Also, the Court hopes that somehow you can be
22 rehabilitated but the Court doesn't have much faith in that
23 possibility.

24 So, the Court has reviewed and considered all
25 pertinent information in the presentence report and the

1 addendum and the other matters presented to it here today.
2 And the Court finds that your total offense level is 30, your
3 criminal history category is a 2, and therefore your
4 guideline range is 108 to 135 months.

5 So, upon your plea of guilty to counts one,
6 two, three, and four of the indictment, it's the judgment of
7 this Court that you're hereby committed to the custody of the
8 Bureau of Prisons to be imprisoned for a term of 135 months.
9 This sentence represents terms of imprisonment of 135 months
10 on each of counts one, two, and three, and 60 months on count
11 four. All terms of imprisonment are to run concurrently with
12 each other. The defendant is sentenced at the high end of
13 the guideline range because of the actual physical abuse of
14 the victim, the 15-year-old girl, and the other reasons
15 already stated upon the record by the Court.

16 Furthermore, the defendant took across the
17 country -- took her across the country and was on the run
18 from authorities for about a month during which time the
19 victim's family did not know where she was. Also, during
20 this time period the defendant continued to have sexual
21 relations with the young lady. The Court also orders that
22 this sentence run concurrent to the sentence imposed by
23 Chenango County Court and I believe you've already been
24 sentenced on that matter?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Upon your release from
2 imprisonment you shall be placed upon supervised release for
3 a period of 25 years on counts one, two, and three, and three
4 years on count four. All terms of supervised release are to
5 run concurrently. While on supervised release you shall not
6 commit another federal, state or local crime and shall comply
7 with the standard conditions that have been adopted by this
8 Court and the following special conditions: You shall
9 cooperate in the collection of DNA as directed by the
10 probation officer. You shall provide the probation officer
11 with access to any requested financial information. You
12 shall not have any direct contact with a person under the age
13 of 18 unless it is supervised by a person approved by the
14 probation office. You shall not have any indirect contact
15 with a person under the age of 18 through another person or
16 through a device, including a telephone, computer, radio or
17 other means, unless it's supervised by a person approved by
18 the probation officer. You shall reasonably avoid and remove
19 yourself from situations in which you have any other form of
20 contact with a minor. You shall not be in any area in which
21 persons under the age of 18 are likely to congregate, such as
22 school grounds, child care centers or playgrounds without the
23 permission of the probation officer. You shall not have any
24 direct or indirect contact with the victim's family. You
25 shall register with the state sex offender registry agency of

1 any state where you reside or are employed or carry on a
2 vocation or are a student.

3 You shall participate in a mental health
4 program which will include, but will not be limited to,
5 participation in a treatment program for sexual disorders.
6 The program shall be approved by the United States Probation
7 Office. Your supervised release may include examinations
8 using a polygraph to obtain information necessary for
9 supervision, case monitoring and treatment. You shall answer
10 the questions posed during the polygraph examination
11 truthfully, subject to your right to challenge in a court of
12 law the use of such statements as violations of your Fifth
13 Amendment rights. In this regard you shall be deemed not to
14 have waived your Fifth Amendment rights. The results of any
15 polygraph examination shall be disclosed to the United States
16 Probation Office and the Court and shall not be further
17 disclosed without the approval of the Court.

18 You shall contribute to the cost of any
19 evaluation, testing and/or treatment and/or monitoring
20 services rendered in an amount to be determined by the
21 probation officer based upon the ability to pay and your
22 availability of any third-party payments that you might have.

23 It's further ordered that you pay restitution
24 in the two amounts. One amount of \$13,933.48 as detailed by
25 the information the Court is going to append to the record

1 and the second amount will be \$52,800 for treatment rendered
2 to the victim in an attempt to have her life straightened
3 around as much as possible. All payments shall be forwarded
4 to the US District Court in Syracuse, New York.

5 While you're in prison you shall make minimum
6 monthly installment payments of 25 percent of your gross
7 monthly income. Upon release from imprisonment you shall
8 make minimum monthly installment payments of 10 percent of
9 your gross monthly income or \$200, whichever is greater. You
10 shall also pay to the Clerk of the Court a special assessment
11 of \$400, which is due immediately. The Court finds based on
12 your financial resources, projected earnings and obligations,
13 as well as your income, that you don't have the ability to
14 pay a fine and will not order a fine.

15 Both you and the government have the right to
16 appeal this sentence under certain circumstances and you have
17 to file an appeal within ten days of the date of this
18 sentence.

19 There's nothing to dismiss because he pled
20 guilty to all counts?

21 MR. LOVRIC: That's correct.

22 THE COURT: Court stands adjourned in this
23 matter.

24 (Court stands adjourned)
25

C E R T I F I C A T I O N

I, VICKY A. THELEMAN, RPR, CRR, United States Court Reporter in and for the United States District Court, Northern District of New York, do hereby certify that I attended at the time and place set forth in the heading hereof; that I did make a stenographic record of the proceedings had in this matter and cause the same to be transcribed; that the foregoing is a true and correct copy of the same and the whole thereof.

VICKY A. THELEMAN, RPR, CRR
United States Court Reporter
US District Court - NDNY

Dated: November 6, 2006.

VICKY ANN THELEMAN, RPR, CRR
UNITED STATES DISTRICT COURT